

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
File No. 5:10-cv-166-D

MELISSA MYERS,

Plaintiff,

v.

SESSOMS & ROGERS, P.A.;
LEE C. ROGERS; and
LVNV FUNDING, LLC,

Defendants.

MOTION FOR SANCTIONS

Fed. R. Civ. P. 11

Pursuant to Rule 11 of the Federal Rules of Civil Procedure, Defendants Sessoms & Rogers, P.A., Lee C. Rogers, and LVNV Funding, LLC (collectively “Defendants”) move the Court for an order imposing sanctions against Plaintiff’s counsel, Angela O. Martin (“Ms. Martin”). In support of this Motion, Defendants state:

1. Plaintiff’s counsel, Ms. Martin, has filed a Complaint in this action falsely accusing Defendants of failing to comply with the North Carolina statute governing notice of payments upon a judgment, N.C. Gen. Stat. § 1-239(c).
2. The Complaint contends that this purported failure constitutes violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692 *et seq.*
3. In the Complaint, Ms. Martin has misrepresented the content of the North Carolina statute and the obligations it creates in order to fabricate the appearance of noncompliance on Defendants’ part.
4. In this action, Ms. Martin failed to conduct a reasonable inquiry as to the facts and the law prior to filing suit.

5. Ms. Martin has filed a Complaint containing legal contentions that are false, that are unwarranted by the language of the applicable statute, and that are foreclosed by case law.

6. Ms. Martin has also filed a Complaint containing allegations unsupported by any information obtained or obtainable prior to filing suit.

7. Ms. Martin has initiated this action by filing a pleading for improper purposes, such as harassing Defendants, seeking to use this action to gain advantage with respect to Defendants' collection of the underlying debt, imposing needless litigation costs, and imposing her own attorney's fees on Defendants under the FDCPA's fee-shifting provision.

8. Pursuant to the "safe harbor" provision of Rule 11(c)(2), Defendants served this Motion and the accompanying Memorandum of Law upon Ms. Martin on May 17, 2010. Thus, Ms. Martin has been given the opportunity required by Rule 11 to withdraw the Complaint before Defendants filed this Motion with the Court. She chose not to do so.

9. As set forth in detail in Defendants' Memorandum of Law in support of this Motion, Ms. Martin's conduct in this action warrants the imposition of sanctions pursuant to Rule 11 as a deterrent to further litigation abuse.

WHEREFORE, Defendants Sessoms & Rogers, P.A., Lee C. Rogers, and LVNV Funding, LLC pray that:

1. The Court dismiss this action in its entirety;
2. The Court require Plaintiff's counsel, Ms. Martin, to pay Defendants their attorney's fees, costs and expenses incurred to defend this action and bring this Motion, pursuant to Rule 11;

3. The Court permit Defendants to submit affidavits and other evidence of the time and expenses put forth by Defendants' counsel and incurred by Defendants in this action in order for the Court to determine the appropriate amount of the award of attorney's fees, costs, and expenses to be taxed to Plaintiff's counsel; and
4. The Court impose such other sanctions against Ms. Martin as it deems proper to deter such conduct in the future.

This 11th day of June, 2010.

Ellis & Winters, LLP

/s/ Jeffrey M. Young

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing **Motion for Sanctions** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Angela Orso Martin, Esq.
Attorney for Plaintiff

angela@angelamartinlaw.com

Dated: June 11, 2010.

/s/ Jeffrey M. Young
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